



Billing Code: 3510-22-P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 622

[Docket No. 130213132-3132-01]

RIN 0648-BD00

Recreational Closure Authority Specific to Federal Waters off  
Individual States for the Recreational Red Snapper Component of  
the Gulf of Mexico Reef Fish Fishery

AGENCY: National Marine Fisheries Service (NMFS), National  
Oceanic and Atmospheric Administration (NOAA), Commerce.

ACTION: Emergency rule.

SUMMARY: NMFS issues this emergency rule to authorize NMFS to  
set the closure date of the recreational red snapper fishing  
season in the exclusive economic zone (EEZ) off individual Gulf  
of Mexico (Gulf) states. At its February 2013 meeting, the Gulf  
of Mexico Fishery Management Council (Council) requested an  
emergency rule to give NMFS this authority. The intent of this  
rulemaking is to constrain recreational red snapper harvest  
within the quota while ensuring a fair and equitable  
distribution of fishing privileges among participants in all the  
Gulf states.

DATES: This emergency rule is effective [insert date of publication in the FEDERAL REGISTER], through [insert date 180 calendar days after date of publication in the FEDERAL REGISTER].

ADDRESSES: Electronic copies of the documents in support of this emergency rule, which include an environmental assessment, may be obtained from the Southeast Regional Office Web site at <http://sero.nfms.noaa.gov>.

FOR FURTHER INFORMATION CONTACT: Susan Gerhart, Southeast Regional Office, NMFS, telephone: 727-824-5305, email: [Susan.Gerhart@noaa.gov](mailto:Susan.Gerhart@noaa.gov).

SUPPLEMENTARY INFORMATION: The Gulf reef fish fishery is managed under the Fishery Management Plan for the Reef Fish Resources of the Gulf of Mexico (FMP). The FMP was prepared by the Council and is implemented through regulations at 50 CFR part 622 under the authority of the Magnuson-Stevens Fishery Conservation and Management Act (Magnuson-Stevens Act). The Magnuson-Stevens Act provides the legal authority for the promulgation of emergency regulations under section 305(c) (16 U.S.C. 1855(c)).

#### Background

The recreational fishing season for Gulf red snapper begins June 1 each year with a two-fish bag limit. The length of the

season is determined by the amount of the quota, the average weight of fish landed, and the estimated catch rates over time. NMFS is responsible for ensuring the entire recreational Gulf harvest does not exceed the recreational quota, including harvest in state waters. Therefore, if states establish a longer season or a larger bag limit for state waters than the Federal regulations allow in the EEZ, the Federal season must be reduced to account for the additional expected harvest in state waters.

Since 2008, the red snapper recreational season has been shortened each year (except in 2010) in an attempt to constrain harvest to the quota; however, the quota continues to be exceeded because of increasing fish size and catch rates (with the exception of 2010). The 2013 recreational fishing season has been estimated to be 27 days, assuming all states have consistent regulations except Texas (Texas has a year-round season and a four-fish bag limit) and the recreational quota will be increased to 4.145 million lb (1.880 million kg), round weight, through separate rule making (currently under development). However, both Louisiana and Florida have recently indicated they will implement inconsistent recreational red snapper regulations for their state waters, as Texas has done in the past. Louisiana has proposed an 88-day season with a 3-fish

bag limit and Florida has proposed a 44-day season with a 2-fish bag limit. Based on the regulations Louisiana and Florida have proposed and estimated catch rates in those state waters, without this emergency rule, the Federal recreational red snapper fishing season in the entire Gulf EEZ would need to be shortened to 22 days, to account for the additional harvest expected from state waters. Therefore, without this emergency rule, the closure date for all Federal waters would be June 22, 2013. Even further reductions would be needed if other Gulf states (Mississippi and Alabama) also implement inconsistent regulations in their state waters.

Through this emergency rule, if a Gulf state sets red snapper regulations that are inconsistent with Federal regulations, NMFS would calculate the recreational red snapper fishing season in the EEZ off that state using an adjusted catch rate, to account for a longer season or larger bag limit in state waters. In some cases, this could allow the EEZ off states with consistent regulations to have a longer season than if the season for the entire Gulf was adjusted. However, if increased catch from a state with inconsistent regulations is too high, even allowing no season in the EEZ adjacent to that state may not be enough to prevent a reduction of the season in the rest of the Gulf. NMFS must continue to adjust the Federal

season off other states so that harvest remains within the quota.

Based on the expected regulations for Texas, Louisiana, and Florida, and assuming the recreational quota is increased to 4.145 million lb (1.880 million kg), the closure dates for each state have been tentatively projected as follows: Texas, June 12, 2013; Louisiana, June 9, 2013; Mississippi, June 28, 2013; Alabama, June 28, 2013; and Florida, June 21, 2013. These dates were projected using estimated catch rates in state waters, assuming the proposed inconsistent regulations would take effect. The method for calculating these dates can be found in SERO-LAPP-2013-02 at

[http://sero.nmfs.noaa.gov/sustainable\\_fisheries/gulf\\_fisheries/red\\_snapper/documents/pdfs/2013\\_red\\_snapper\\_emergency\\_regs.pdf](http://sero.nmfs.noaa.gov/sustainable_fisheries/gulf_fisheries/red_snapper/documents/pdfs/2013_red_snapper_emergency_regs.pdf).

When NMFS has calculated final season dates for the EEZ off each Gulf state, NMFS will officially announce these closure dates in the Federal Register.

The Council has discussed other potential actions to address the current situation, including possible preemption of inconsistent state management pursuant to section 306(b) of the Magnuson-Stevens Act (16 U.S.C. 1856(b)). The Council is continuing to discuss this and other potential long-term actions to address the recreational harvest of red snapper.

## Need for This Emergency Rule

The "Policy Guidelines for the Use of Emergency Rules" (62 FR 44421, August 21, 1997) list three criteria for determining whether an emergency exists.

(1) Results from recent, unforeseen events or recently discovered circumstances; and

(2) Presents serious conservation or management problems in the fishery; and

(3) Can be addressed through emergency regulations for which the immediate benefits outweigh the value of advance notice, public comment, and deliberative consideration of the impacts to the same extent as would be expected under the normal rulemaking process.

NMFS is promulgating these emergency regulations under the authority of the Magnuson-Stevens act, consistent with these three criteria. For the first criteria for an emergency rule, the recently discovered circumstance is that states other than Texas intend to implement recreational red snapper regulations in state waters that are less restrictive than Federal regulations.

States setting less restrictive regulations presents serious conservation problems because, in the absence of new rules, those actions are likely to lead to red snapper harvest

overages in violation of the Magnuson-Steven Act. This emergency rule will help NMFS to constrain recreational red snapper harvest within the quota, as required by section 407(d) of the Magnuson-Stevens Act (16 U.S.C. 1883(d)), which requires the councils to establish annual catch limits for each stock and accountability measures to ensure these catch limits are not exceeded. The in-season closures are the accountability measures for the recreational red snapper sector. This rule will also help ensure a fair and equitable distribution of fishing privileges among participants in all the Gulf states, in accordance with National Standard 4 of the Magnuson-Stevens Act.

The immediate benefit of implementing the emergency rule outweighs the value of advance notice and public comment. The recreational red snapper fishing season opens June 1, 2013. This emergency rule provides the authority to establish state by state closure dates, and announces preliminary closure dates for each area of the EEZ and therefore, gives the public preliminary notice of how long the fishing season will likely be off their respective state. Delaying announcement of this emergency rule to accommodate prior public notice and comment would result in significantly less advance notice of the EEZ closure dates off each Gulf state. This would decrease the time available for for-hire businesses to adjust their business plans and private

anglers to plan their fishing seasons, which would be very disruptive to businesses dependent on the red snapper component of the Gulf reef fish fishery for revenue.

#### Measures Contained in this Emergency Rule

This emergency rule will allow NMFS to set different closure dates for the recreational red snapper fishing season in the EEZ adjacent to each Gulf state. The boundaries between the EEZ off each state were specifically identified by the Council during deliberations.

All other Federal regulations for recreational red snapper remain in effect. In particular, § 622.4(a)(1)(iv) states if Federal regulations for Gulf reef fish are more restrictive than state regulations, a person aboard a charter vessel or headboat for which a charter vessel/headboat permit for Gulf reef fish has been issued must comply with such Federal regulations regardless of where the fish are harvested. Relative to this emergency rule, that means if the EEZ off a particular state is closed to recreational red snapper harvest, then vessels with a Federal charter vessel/headboat permit may not harvest red snapper in those state waters.

#### Classification

This action is issued pursuant to section 305(c) of the Magnuson-Stevens Act, 16 U.S.C. 1855(c). The Assistant



Administrator for Fisheries, NOAA (AA), has determined that this emergency rule is necessary for the conservation and management of the recreational red snapper component of the Gulf reef fish fishery and is consistent with the Magnuson-Stevens Act and other applicable laws.

This emergency rule has been determined to be not significant for purposes of Executive Order 12866.

The AA finds good cause to waive the requirements to provide prior notice and opportunity for public comment pursuant to the authority set forth in 5 U.S.C. 553(b)(B).

Providing prior notice and opportunity for public comment on this action would be contrary to the public interest. Many of those affected by these closures, particularly charter vessel and headboat operations, book trips for clients months in advance and many times these anglers are visiting from out-of-state and are also in need of as much advance notice as the for-hire operations they are hiring. Private anglers plan their fishing season sometimes months in advance as well, especially if they are visiting from out-of-state. They may be planning on renting a boat for their own use, thus advance notice is needed to know when to rent the boat. Therefore, both for-hire businesses and private anglers need as much time as possible to adjust their business plans and plan their fishing seasons to

account for these closures. Delaying announcement of this emergency rule to accommodate prior public notice and comment would result in significantly less advance notice of the EEZ closure dates off each Gulf state. This would decrease the time available for affected participants to adjust their business plans and plan their fishing seasons, and be very disruptive.

For the reasons listed above, the AA also finds good cause to waive the 30-day delay in effectiveness of the action under 5 U.S.C. 553(d)(3).

Because prior notice and opportunity for public comment are not required for this rule by 5 U.S.C. 553 or any other law, the analytical requirements of the Regulatory Flexibility Act, 5 U.S.C. 601 et seq. are inapplicable. Accordingly, no Regulatory Flexibility Analysis is required and none has been prepared.

List of Subjects in 50 CFR Part 622

Fisheries, Fishing, Puerto Rico, Reporting and recordkeeping requirements, Virgin Islands.

Dated: March 19, 2013

---

Alan D. Risenhoover,

Director, Office of Sustainable Fisheries,  
performing the functions and duties of the

Deputy Assistant Administrator for Regulatory Programs,  
National Marine Fisheries Service.

For the reasons set out in the preamble, 50 CFR part 622 is amended as follows:

PART 622--FISHERIES OF THE CARIBBEAN, GULF, AND SOUTH ATLANTIC

1. The authority citation for part 622 continues to read as follows:

Authority: 16 U.S.C. 1801 et seq.

2. In § 622.2, the definitions for "Off Louisiana", "Off Mississippi" and "Off Alabama" are added in alphabetical order to read as follows:

§ 622.2 Definitions and acronyms.

\* \* \* \* \*

Off Alabama means the waters in the Gulf west of a rhumb line at 87°31.1' W. long., which is a line directly south from the Alabama/Florida boundary, to a rhumb line at 88°23.1' W. long., which is a line directly south from the Mississippi/Alabama boundary.

Off Louisiana means the waters in the Gulf west of a rhumb line at 89°10.0' W. long., which is a line extending directly south from South Pass Light, to a rhumb line beginning at 29°32.1' N. lat., 93°47.7' W. long. and extending to 26°11.4' N.

lat., 92°53.0' W. long., which line is an extension of the boundary between Louisiana and Texas.

\* \* \* \* \*

Off Mississippi means the waters in the Gulf west of a rhumb line at 88°23.1' W. long., which is a line directly south from the Mississippi/Alabama boundary, to a rhumb line at 89°10.0' W. long., which is a line extending directly south from South Pass Light.

\* \* \* \* \*

3. In § 622.43, paragraph (a)(1)(ii) is suspended and paragraph (a)(1)(iv) is added to read as follows:

§ 622.43 Closures.

(a) \* \* \*

(1) \* \* \*

(iv) Recreational quota for red snapper. The bag and possession limit for red snapper in or from the Gulf EEZ is zero, off specified Gulf states and on specified dates as determined by NMFS and announced in the Federal Register. If one or more Gulf states establish less restrictive red snapper regulations than Federal regulations, NMFS may reduce the recreational red snapper season in the Gulf EEZ off those states (including a zero-day season) by the amount necessary to compensate for the additional harvest that would occur in state

waters as a result of those inconsistent state regulations.

\* \* \* \* \*

[FR Doc. 2013-06772 Filed 03/22/2013 at 8:45 am; Publication

Date: 03/25/2013]